

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4307 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KESHAVLAL SOMABHAI PATEL

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR (ULC)

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Appearance:

MR PM BHATT for Petitioners  
MR.MA BUKHARI ASSTT.GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 16/07/97

ORAL JUDGEMENT

Heard Mr.Bhatt for the petitioner. Rule.  
Mr.Bhatt has filed an additional affidavit affirmed on 3rd July, 1997. He has already stated on 18th June, 1997 that he is confining this petition only to Survey No. 73/1 of the village Chandlodiya. Mr.Bhatt has contended that all throughout, the authorities concerned proceeded with the matter on the footing that the petitioners owned

land bearing Survey No. 73/2, but in fact, what they owned was Survey No.73/1. This controversy is noted in the order passed in appeal on 10th March, 1993. Having noted that, the authority has proceeded to include the land in Survey No.73/1 in the holdings of the petitioner. No draft amendment with respect to this survey number was, however, submitted earlier. This has resulted in two anomalies. Firstly, though the area of this survey number 73/1 is 2833 sq.mts, in the calculations, the area is taken as 2125 sq.mts. Besides Mr.Bhatt states that the petitioner had (though in vague manner) submitted before the appellate authority that the said land is used for agricultural purposes. It is stated in the appeal memo to the appellate authority that according to the appellant, the land is exempted under Sec.20 of U.L.C.Act.

It is not advisable to keep the matter pending for these anomalies. Hence Rule is issued and it is made returnable forth with. Having heard Mr.Bhatt for the petitioner and Mr.Bukhari, AGP for the respondents, I am of the view that the appellate authority should rehear the parties again only with respect to Survey No.73/1. The appellate authority will find out as to what is the correct area of this survey number and also as to whether, as per record, that survey number was used for agricultural purposes or not, when the Act came into force. The order dt. 10th March, 1993 is interfered with only to this limited extent. Other part of the order with respect to other survey numbers is confirmed. The authority will hear the parties, and decide the appeal expeditiously, in accordance with law. Needless to say that respondent will not proceed to take possession of Survey No.73/1, until the revived appeal is heard and finally decided. This petition is partly allowed. Rule is made absolute to the aforesaid extent only, with no order as to costs..

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ccs